IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

FAO.No. 207 of 2003()

{IN I.A.NO.955/2002 IN O.S.NO.537/1994 OF THE SUB COURT, PALA}

APPELLANTS/PETITIONERS-ADDL.PLAINTIFFS 2 & 3:

1. NANCY MATHEW, D/O. THOMMAN MATHEW, KUZHINJALIL HOUSE, KURUMANNAM P.O., KADANADU VILLAGE, MEENACHIL TALUK.

2. JOJI MATHEW, S/O. THOMMAN MATHEW, KUZHINJALIL HOUSE, KURUMANNAM P.O., KADANADU VILLAGE, MEENACHIL TALUK.

BY ADV. SRI.P.VIJAYAKUMAR

RESPONDENTS: COUNTER PETITIONERS-DEFENDANTS:

1. THOMMAN TOMY, KUZHINJALIL HOUSE, KURUMANNAM P.O., KADANADU VILLAGE, MEENACHIL TALUK.

2. THANKAMMA TOMY, KUZHINJALIL HOUSE, KURUMANNAM P.O., KADANADU VILLAGE, MEENACHIL TALUK.

3. SR. MAREENA, PRESENTATION CONVENT, COIMBATORE, FROM KUZHINJALIL HOUSE, KURUMANNAM P.O., KADANADU VILLAGE, MEENACHIL TALUK.

4. THOMMAN SEBASTIAN,KUZHINJALIL HOUSE, ALANADU, BHARANGANAM.

R1 & R2 BY ADVS. SRI.V.G.ARUN
& SRI.T.R.HARIKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DISMISSED.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

07.08.2007.

sk/-

//true copy//

P.S. To Judge.

J.B.KOSHY & V.GIRI,JJ.

F.A.O.NO.207 of 2003

Dated this the 7th day of August, 2007.

JUDGMENT

KOSHY,J.

This appeal is directed against the order of dismissal of the application for restoring the suit O.S.No.537/94 on the file of the Sub Court, Pala.

2. The above suit was filed originally by the father of the appellants, for fixation of boundaries and also for recovery of possession of about 80 cents of property allegedly trespassed by the respondents/defendants and for compensation and consequential injunction. On the demise of the original plaintiff pending the suit, the appellants were impleaded as his legal representatives. The matter was being prolonged for one reason or the other by the appellants herein. Several times, the Advocates were changed. Finally, this court directed the court below to dispose of the suit within six months and thereafter the case was posted by the Sub Court for hearing. Again an application for time was filed. That application was dismissed saying that the suit is being dragged on by changing the advocates. The suit was dismissed for non-appearance of the plaintiffs by order dated

20.10.2002. An interlocutory application was filed for restoring the suit. By the impugned order, that was also dismissed. The application for restoration was dismissed stating valid reasons. The court below found that the appellants/plaintiffs were protracting the suit. However, considering the fact that a commission was already appointed and evidence was actually taken and also the fact that the original plaintiff is no more and the present appellants were impleaded as his legal representatives, we are of the opinion that the suit can be restored on terms.

3. According to the appeal memorandum, the matter involves heavy stakes. The suit was instituted in 1994. 13 years have elapsed. The suit shall stand restored on condition that the appellants/plaintiffs pay Rs.10,000/- as costs to the respondents/defendants within 45 days from today. If the amount is not paid as directed above, the impugned order will stand confirmed. If evidence regarding the payment of costs is produced before the Sub Court, the suit shall be restored with a

further direction that no further adjournment shall be given at the instance of the appellants/plaintiffs in future.

4. The parties are directed to appear before the Sub Court, Pala on **09.10.2007.** The Sub Court is directed to dispose of the suit, if restored, before the end of December, 2007.

The appeal is disposed of as above.

Sd/-
(J.B.KOSHY)
JUDGE

Sd/-
(V.GIRI)
JUDGE

sk/

//true copy//